

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND)
COMPOUNDING PHARMACY, INC.) MDL No. 2419
PRODUCTS LIABILITY LITIGATION) Dkt. No. 1:13-md-2419-RWZ

This Document Relates to:)

Suits Naming Specialty Surgery Center,)
PLLC)

**SPECIALTY SURGERY CENTER, PLLC, AND KENNETH LISTER, M.D.'S
FIRST SUPPLEMENTAL PRIVILEGE LOG**

Pursuant to the *Order Regarding Common Issue Discovery* [Dkt. 1425], specifically Section II., C., the Defendants, Specialty Surgery Center, PLLC ("SSC"), and Kenneth Lister, M.D. ("Dr. Lister") (collectively "these Defendants"), hereby serve their first supplemental privilege log.

The log is attached as an exhibit to this document.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

C.J. Gideon, Jr.*

Chris J. Tardio*

Alan S. Bean**

Matthew H. Cline*

315 Deaderick Street, Suite

Nashville, TN 37238

Ph: (615) 254-0400

Fax: (515) 254-0459

chris@gideoncooper.com

*Attorneys for the Tennessee Clinic
Defendants*

* Admitted pursuant to MDL Order No. 1

** Admitted *pro hac vice*.

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 2016, a true and accurate copy of the foregoing was served on the following by electronic mail.

<p>Gerard Stranch, IV Ben Gastel Branstetter, Stranch & Jennings, PLLC 227 2nd Ave N Suite 400 Nashville, TN 37201 gerards@BSJFirm.com beng@BSJFirm.com</p> <p><i>Attorneys for the PSC</i></p>	<p>John W. Moran LeClairRyan One International Place, Eleventh Floor Boston, Massachusetts 02110 (617) 502-8212 Direct (617) 502-8262 Fax John.Moran@leclairryan.com</p> <p><i>Attorneys for Calisher & Associates</i></p>
--	--

/s/ Chris J. Tardio

Chris J. Tardio

EXHIBIT

SSC, et al. First Supplemental Privilege Log

Document Type	Date Created	Author(s)	Recipient(s)	Privilege Asserted
Binder of Approved Procedures & Medical Privilege Lists, detailing approved medical procedures at SSC and the procedures each physician is approved to perform.	August 2010 – February 2013	SSC Executive Committee, various applying physicians and staff, including Susan Pick, M.D., Jon Simpson, M.D., and Kenneth Lister, M.D.	N/A	Quality Improvement Privilege, Tenn. Code Ann. § 68-11-272
Continuous Quality Improvement ("CQI") Data Binder, including "Peer Reviews" and "Incident Reports," from 2004-2008. The Incident Reports detail the time, date, and location of patient incidents, describe the underlying facts of each incident, and include any corrective actions taken and the ultimate disposition of each matter for evaluating the quantity, quality, and timeliness of healthcare services rendered to patients. The individual Peer Reviews and Incident Reports are maintained for quarterly review and are discussed in the CQI Reports.	January 2004 – December 2008	Trudy Hedgecough, Jean Atkinson, Tina England, Kenneth Lister, M.D., Karen Laws, Michelle Phillips	N/A	HIPAA; Quality Improvement Privilege, Tenn. Code Ann. § 68-11-272
Binder of CQI Reports for 2013, including Quality Assurance Reports and Performance Improvement Peer Review Worksheets. The Quality Assurance Reports analyze quarterly compliance with policies and procedures and identify specific areas for quality improvement for each upcoming quarter. The Peer Review Worksheets document the physicians' review of medical records for randomly-selected patients of other SSC physicians, including: whether each patient was an appropriate candidate for the center, whether the procedure was properly performed, whether drugs were administered according to written orders, and whether discharge orders were complete.	January 2013 - December 2013	Jean Atkinson	N/A	Quality Improvement Privilege, Tenn. Code Ann. § 68-11-272

Documents from SSC's Executive Committee meetings related to quality improvement activities, including CQI reports, surgical and pain management peer reviews, patient-specific quality assurance, and CQI summaries for 2010-2012. The reports contain medical record audits for the completeness and accuracy of chart documentation and describe specific areas for desired improvement. The patient-specific reviews describe individual procedures, any complications or incidents that occurred during the procedures, how those incidents were resolved, and recommendations for improving future treatment.	January 26, 2009 – April 16, 2013	Gina Calisher, Jean Atkinson	SSC Executive Committee	HIPAA; Quality Improvement Privilege, Tenn. Code Ann. § 68-11-272
Binder containing Postanesthesia Care Unit ("PACU") Narcotic Count and Administration Records, Endo Patient Narcotic Counts, and Anesthesia Narcotic Records. These records list non-litigant patient names and document the dates, times, and dosage strengths of medications given to patients. The records are kept for peer review purposes and in accordance with state and federal controlled substance regulations, including 21 C.F.R. 1301.90-92 and Tenn. Comp. R. & Regs. 0880-02-.14(3).	January – December 2012	Jean Atkinson, Michelle Phillips, Patricia Richards	N/A	HIPAA; Quality Improvement Privilege, Tenn. Code Ann. § 68-11-272
Drug expiration checklists from SSC's Product Recall Binder, Bates pages SSC 00769-00836.	January 2011 – May 2013	Karen Laws	N/A	Quality Improvement Privilege, Tenn. Code Ann. § 68-11-272
Non-litigant patient names appearing on Order forms, packing slips, and invoices from SSC's 2012 purchases from NECC, Bates pages SSC 00023 – 00029.	July 12, 2012; August 13, 2012	Jean Atkinson	NECC	HIPAA
Non-litigant patient names and protected health information in Jean Atkinson's handwritten notes related to the NECC recall, redacted from Bates pages SSC 00241 – 00299.	September – October 2012	Jean Atkinson	N/A	HIPAA

Non-litigant patient names and protected health information in Kenneth Lister, M.D.'s handwritten notes related to the NECC recall, redacted from Bates pages SSC 00307 – 00312.	September – October 2012	Kenneth Lister, M.D.	N/A	HIPAA
(1) Non-litigant patient names and protected health information and (2) notes reflecting privileged attorney-client communications in Kim Bowlin's handwritten notes related to the NECC recall, redacted from Bates pages SSC 00314 – 00327.	September – October 2012	Kim Bowlin	N/A	HIPAA; Attorney-Client privilege, Work-Product Doctrine
Non-litigant patient names and protected health information in SSC's correspondence with TriCare and Amerigroup, redacted from Bates pages SSC 00675 - 0677.	October 2012	Kim Bowlin, Jean Atkinson	TriCare, Amerigroup	HIPAA
Letter from Amerigroup asking about the NECC recall, which patients received injections from the contaminated lots, and SSC's infection control training. SSC did not produce this letter because Amerigroup asserted that it is privileged under the PSQIA.	October 5, 2012	Patricia Kirkpatrick	Jean Atkinson	Patient Safety Quality Improvement Act (PSQIA), 42 U.S.C. § 299b-22(a).
Non-litigant patient names and protected health information in the lists of physicians who referred patients to SSC for epidural steroid injections, and communications between SSC and those physicians, redacted from Bates pages SSC 00329 – 00456.	October 2-3, 2012	Jean Atkinson, Brittany Schubert	Various referring physicians	HIPAA
Letter to Dr. Lister from Board of Medical Examiners taking no formal disciplinary action and no notice of charges	July 13, 2015	Board of Medical Examiners (letter signed by Rene Saunders, MD)	Kenneth Lister, MD	Tenn. Code Ann. § 63-1-117 and § 63-6-214